

## CLAIMS COMMISSION

*Exchange of notes at Port-au-Prince June 1 and 3, 1922, supplementing protocol of October 3, 1919, pursuant to article XII of treaty of September 16, 1915*

*Entered into force June 3, 1922*

*Treaty expired May 3, 1936*

Department of State files

*The American High Commissioner to the Minister of Foreign Affairs*

PORT AU PRINCE

*June 1, 1922*

MR. MINISTER:

Referring to the Haitian Government's Memorandum under date of December 30, 1921, and to its note of January 31, 1922, my Government has noted that the Haitian Government believes that in point of law the Protocol of October 3, 1919,<sup>1</sup> has lapsed, but that the difficulty regarding the time limit mentioned in the Protocol may be overcome by a clause inserted in the loan law, and its further suggestion, in paragraph 9 of the Memorandum of December 30, 1921, that provisions should be inserted in the loan law regarding the conversion of the bonds of the two remaining French loans.

I am instructed to inform Your Excellency that my Government while still regarding the Protocol as being valid, and in full force and effect, is nevertheless willing that the difficulties which have arisen should be overcome by a supplementary understanding between the two Governments. It feels, however, that the loan law should only embody the provisions necessary to confirm the authority of the Haitian Executive Power to contract the loan; and that the other questions affecting the validity of the Protocol, the method of issuing the proposed loan, and the disposition of the proceeds thereof, should be settled by an exchange of notes between the two Governments.

To put into effect, therefore, the proposal of my Government that these matters be dealt with by an exchange of notes, I am instructed to inform the Government of Your Excellency, in this manner, that inasmuch as under the provisions of the Protocol of October 3, 1919, between the United States and Haiti, and to carry out the purposes for which the Protocol was made, the

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<sup>1</sup> TS 643, *ante*, p. 678.

Republic of Haiti agreed to issue not later than two years after the date of the signature of the Protocol a national loan of forty million (\$40,000,000) gold, payable in thirty years, and inasmuch as the Republic of Haiti has not as yet issued any part of said loan, although said period of two years has expired, the Government of the United States will agree to an extension of the period provided in the Protocol for the flotation of the loan, provided that the agreement assumed in the Protocol shall be carried out within a reasonable time.

I am further instructed to state that the Government of the United States will consider that the provisions of the Protocol are fulfilled if the bonds of the loan shall be issued in series, the amount of each series, the terms on which it is to be sold, the rate of interest, the terms of the sinking fund applicable thereto and the provisions as to when and how said bonds shall be redeemed all to be fixed by the Haitian Government in accord with the Financial Adviser.

I am further instructed to state that it is the understanding of the Government of the United States that the proceeds of said bonds, as well as the bonds themselves, may be used for payment of obligations mentioned in Articles III and VII in said Protocol, and that the reservation of bonds for the two year period for conversion, referred to in said Article VII, is applicable only to such of the bonds as are allocated to the purpose of conversion and does not preclude the immediate use of bonds or the proceeds of bonds not so allocated for other purposes referred to in said Protocol.

Finally, I am instructed to say that my Government considers that the internal funded debts of Haiti, as represented in the bond issues of 1912, 1913 and 1914, A, B, and C, do not come within the provisions of the Protocol as 'pecuniary claims', but are liquidated debts, and that it would, therefore, be proper for the Haitian Government to redeem these bond issues, or to maintain their service without submission to the Claims Commission.

As soon as the Government of Your Excellency will indicate to my Government that it is prepared to proceed with the obligations assumed by it under the Protocol, and especially to fulfill its obligations as to a bond issue, in pursuance of the waiver by my Government, contained in this note, of the time limit mentioned in the Protocol, which expired on October 3, 1921, for the issuance of the stipulated bonds by the Haitian Government, my Government would be gratified to receive a reply to my note stating that the Government of Haiti has noted that the Government of the United States, provided the loan is issued within a reasonable time, waives the stipulation of the Protocol establishing a period of two years within which the Republic of Haiti should have performed the agreement made in Article VI of the Protocol of October 3, 1919, to issue the national loan of forty million dollars (\$40,000,000); that the Government of Haiti takes this occasion to confirm its agreement to issue a loan of that amount and to state that it is in accord with the suggestions of the Government of the United States made in the note

under reply, namely, that the bonds of the loan shall be issued in series, the amount of each series, the terms on which it is to be sold, the rate of interest, the terms of the sinking fund applicable thereto and the provisions as to when and how said bonds shall be redeemed all to be fixed by the Haitian Government in accord with the Financial Adviser; and that the Government of Haiti further states that the understanding of the Government of the United States as to the use of the bonds or the proceeds thereof is also in accordance with the understanding of the Government of Haiti.

I am instructed further to state that it would appear that the Secretary of State for Finance of Haiti should now nominate a member of the Claims Commission, to be followed by nominations of two other members of the Commission, one each by the Secretary of State of the United States and the Financial Adviser of Haiti, and the three members so nominated to be appointed by the Government of Haiti, as agreed upon in the Protocol. In this relation, my Government desires to be informed as to the applicable laws of Haiti upon the question of whether it is necessary for the Haitian Legislature to enact legislation providing for the constitution of the Commission, the payment of salaries to its members, and other pertinent matters, or whether such matters could be dealt with by the Executive alone.

With regard to the outline contained in the Memorandum of December 30, 1921, of the suggested law authorizing the loan, I am instructed by my Government to state that it is unable to agree to this outline, insofar as it departs from the provisions already agreed upon between the two Governments, as embodied in the Protocol. My Government considers that, by virtue of the last sentence of Article X of the Protocol, the Republic of Haiti has obligated itself to enact a law strictly following the provisions of the Protocol. I am instructed to say, however, that my Government avails itself with much pleasure of the suggestion contained in the Haitian Government's note of January 31, 1922, to make known the provisions that it considers it would be proper to carry in the law authorizing the loan. I therefore have the honor to submit the following draft of a loan law to take the place of the outlines of a law suggested in the Haitian memorandum of December 30th, last:—

“WHEREAS, in order to carry out the purposes of the Treaty between the United States and Haiti of September 16, 1915,<sup>2</sup> as extended by the Additional Act between the United States and Haiti of March 28, 1917,<sup>3</sup> a Protocol was concluded between the two Governments on October 3, 1919, and

WHEREAS, certain modifications in this Protocol were agreed to in an exchange of notes between the two Governments, dated \_\_\_\_\_ and

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<sup>2</sup> TS 623, *ante*, p. 660.

<sup>3</sup> TS 623-A, *ante*, p. 675.

WHEREAS, it is now necessary to authorize the Executive Power to contract the loan provided for in the Protocol as thus modified, be it enacted as follows:

1. The provisions of said Protocol, modified as above, are adopted as laws of the Republic.

2. The Executive Power is hereby authorized to contract a loan to the amount of forty million dollars (\$40,000,000), payable in or within thirty years from the dates of issue.

3. Said loan may be issued in series, on such terms, in such amounts, at such rates of interest, and with such provisions for sinking funds and for redemption of bonds as may be agreed upon by the Minister of Finance (or such other officer as should properly be named), in accord with the Financial Adviser.

4. Until such loan is paid in full the payment of interest thereon and the amortization thereof shall constitute a first charge on all the internal revenue of the Republic, and a second charge on the customs revenue of the Republic next in order until the expiration of the Treaty of September 16, 1915, after payment of salaries, allowances and expenses of the General Receiver and Financial Adviser and their assistances appointed in accordance with said Treaty.

5. The control of the collection and allocation of such hypothecated revenue, after the expiration of said Treaty and until said loan is paid in full, shall continue to be vested in an officer or officers appointed by the President of Haiti on nomination by the President of the United States, as provided in the Protocol above referred to."

With regard to the suggestion contained in the Haitian Government's note of January 31, 1922, which I had the honor to transmit by telegraph to my Government, to the effect that in its note of December 30th, last, the Haitian Government demonstrated that without new taxes the loan offer submitted by Messrs. Lee, Higginson and Company, if accepted, would cause the Haitian Government to be confronted by an annual deficit of \$1,000,000, I am instructed by my Government to state that it continues, as at all times in the past, willing to assist the Haitian Government in the matter of drafting laws imposing new taxes and in the matter of improving the collection of taxes under existing laws.

With reference to the request made by the Haitian Government in its note of January 31, 1922, that this Government lend its good offices to the Haitian Government to obtain certain improvements in the conditions of the loan, I am instructed by my Government to inform Your Excellency that as soon as its request, repeatedly made in the course of the present negotiations, to transmit to the Financial Adviser of Haiti, temporarily in Washington, the necessary full powers from the Haitian Government has been complied with,

the Department will be very glad, as heretofore, to continue to give its assistance and counsel to the Financial Adviser in the formal negotiations he would then be enabled to undertake in behalf of Your Excellency's Government, and Your Excellency may rest assured that the Financial Adviser, with the full cooperation of the Department of State, will endeavor to obtain whatever improvements in terms may be possible from the bankers for whose proposals a preference was expressed by the Haitian Government in its Memorandum of December 30th, last.

Be pleased to accept, Mr. Minister, the assurance of my high consideration.

JOHN H. RUSSELL  
*American High Commissioner*

His Excellency,  
M. LEON DÉJEAN,  
*Minister of Foreign Affairs,  
Port-au-Prince.*

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*The Minister of Foreign Affairs to the American High Commissioner*<sup>4</sup>

[TRANSLATION]

In response to Your Excellency's note of the first of this month repeating the note of April 15th addressed to my predecessor and putting into effect the engagements entered into by the Government preceding according to correspondence already exchanged, notably the contracting powers of the Department of Foreign Affairs of January 31, I have the honor to inform you that the Haitian Government has noted that the Government of the United States renounces the stipulation of the protocol which fixed a period of two years during which the Republic of Haiti should execute the engagement provided for in article six to issue a loan of \$40,000,000 provided always that the loan be contracted within a reasonable date.

I am likewise charged always in view of the correspondence above referred to to confirm to your Excellency that the Haitian Government is in accord with the Government of the United States for the issuance of the loan in taking into consideration the suggestions contained in the letter of the American representative dated April 15th.

The Haitian Government also shares the opinion of the Government of the United States with respect to employment of the bonds and their proceeds.

We are pleased to learn that the new situation of the market permits the Haitian Government to count on more advantageous conditions than those offered up to now.

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<sup>4</sup> Substance of note dated June 3, 1922, transmitted to Secretary of State by American High Commissioner.